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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Retaliation against lawyers who support human rights

1. The Lawyers Committee for Human Rights is deeply concerned about the harassment and abuse of lawyers whose work as practising attorneys supports basic human rights. Though international instruments like the UN Basic Principles on the Role of Lawyers ("Basic Principles") and the Declaration on Human Rights Defenders ("the Defenders Declaration") are designed to protect human rights lawyers from abuse, in practice they often face restrictions, prosecution, or outright violence in retaliation for their work. Whether direct or indirect, physical or "legal", such measures threaten not only the work of individuals but also the integrity of important institutions, and by extension, the societies to which they belong.

2. Out of the many cases of violations against human rights lawyers that the Lawyers Committee for Human Rights encounters each year, those that follow are merely representative of a much larger pattern of abuse.

Physical violence against human rights lawyers

3. In March 1999, a lawyer in Northern Ireland, Rosemary Nelson, died as a result of a car bomb blast outside her home. Nelson was one of a small number of defense lawyers in Northern Ireland who represented politically active clients. After ten months of investigation, nobody has been charged regarding Rosemary Nelson's murder. Despite recommendations by Param Cumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers, and an ongoing campaign by national and international organizations that informed the authorities of the continuing threats against Nelson, no governmental protection was ever provided to Nelson.

4. In October 1999, Digna Ochoa, head of the legal division of the Miguel Agustín Pro Juárez Center for Human Rights (PRODH) was attacked in her home. In a 9-hour ordeal Ochoa was rendered unconscious, blindfolded, tied up, threatened, harshly interrogated and pressured to sign a statement by at least two individuals. They insistently questioned her on insurgent organizations in southern Mexico. After cutting her phone line, the attackers left Ochoa near an opened natural gas valve. The next day staff discovered that the PRODH offices had been broken into and ransacked; a death threat scrawled on a file folder was found among the debris. These types of attacks have been intensifying since early August 1999. In November 1999 the Inter-American Court of Human Rights ordered Mexico to take all measures necessary to protect the life and safety of Ochoa and the PRODH staff. The Lawyers Committee calls upon the Commission on Human Rights to make similar recommendations.

5. In December 1999, Teki Bokshi, a Kosovar lawyer representing Albanian political prisoners detained in Serbia, was abducted by several men who approached him in a car bearing license plates from the Serbian Interior Ministry. He was travelling from Kosovo to Serbia to visit his clients. During two weeks of incommunicado detention

he was kept on the floor of a bathroom and fed every other day. The police claimed to have no knowledge of his arrest or whereabouts and made no attempt to investigate. Bokshi was released only after a private attorney arranged for his family to pay a ransom.

6. Protecting human rights lawyers from physical abuse is secured explicitly by paragraph 17 of the Basic Principles and article 12 of the Defenders Declaration. These requirements echo basic international norms protecting all individuals from arbitrary violence, torture or other abuse. The international community should not countenance such acts by any State against any person, nor should it tolerate a State's failure to protect lawyers from such behavior by non-State actors.

Criminal and civil lawsuits as a tool for punishing human rights lawyers.

7. In Malaysia lawyers have suffered retaliation at the hands of the judiciary for their attempts to vigorously defend their clients. In January 2000, lawyer Karpal Singh was arrested on allegations of sedition. Karpal has been representing former Deputy Prime Minister Anwar Ibrahim in a trial on sodomy charges. Karpal's arrest was based on comments he made in court suggesting that his client, whose blood arsenic level had risen dangerously, may have been poisoned in detention. This is not the first time Malaysia has attempted to punish a lawyer for critical comments in a legal proceeding. Another Anwar lawyer, Zainur Zakaria, was convicted in November 1998 for criminal contempt after filing papers, backed by evidence, alleging that prosecutors tried to fabricate evidence against Anwar.

8. Even international officials may face retribution for their official acts in Malaysia. Malaysia persists in denying Param Cumaraswamy, UN Special Rapporteur on the independence of judges and lawyers, immunity from legal action, as required by international law. Cumaraswamy is being sued for libel based upon comments made during his UN investigation into the ability of private interests to manipulate the Malaysian legal system. The Malaysian government has chosen to ignore the International Court of Justice opinion which states that Cumaraswamy is entitled to immunity. Cumaraswamy has accordingly been forced to halt his investigations into the Malaysian judiciary.

9. For over 6 years, Turkish officials have pursued charges against 25 lawyers from Diyarbakir alleging that the attorneys have abetted a terrorist organization. The weak and contradictory nature of the evidence presented against the lawyers suggests that the charges were motivated by their support for local human rights organizations and representation of unpopular defendants. Each faces up to seven years' imprisonment if convicted. In the meantime they are being subjected to a lengthy, obstructive process.

10. The misuse of legal process to punish lawyers for their representation of unpopular clients and support for human rights is strictly prohibited by paragraphs 16, 17, 18 and 20 of the Basic Principles which forbid prosecution for actions taken by lawyers in accordance with their professional duties. Similarly, the Defenders Declaration

requires States to protect those who promote human rights from criminal sanction regarding those activities. These requirements are intended to support the fundamental right to fair use of criminal process. Punishing lawyers in retaliation for internationally protected activity clearly violates these norms.

Professional restrictions: disqualification from legal practice and other hindrances on public advocacy

11. In Djibouti, lawyer Aref Mohamed Aref has openly criticized the government. He is the only lawyer in Djibouti willing to represent politically unpopular clients. In February 1999 Aref was convicted and imprisoned by a deeply flawed legal process on charges of attempted fraud that appear to have been fabricated by the authorities. Contrary to local law, the appeals court suspended Aref from legal practice for 5 years. The authorities also confiscated his Djibouti and French passports.

12. Belarus lawyer, Oleg Volcheck, has been arrested and severely beaten by police officers in connection with a demonstration to demand the resignation of President Lukashenko. He has faced administrative charges for his membership in the Central Election Commission which organized the opposition-led Presidential elections and has been warned that should he be found guilty of any further administrative charges he will be disqualified from legal practice.

13. Volchek is also the director of the Public Legal Aid Association: one of the few organizations in Belarus that offers free legal assistance to victims of human rights abuses and political dissidents. In November 1999 the Belarus government suspended the Association's license on what appears to be spurious grounds. The poor and the political opposition now have little recourse to lawyers.

14. When lawyers like Volchek and Aref speak about human rights, their comments are specifically protected by international law, including paragraph 23 of the Basic Principles. Furthermore, the right to promote human rights by speech and association is protected by articles 1, 5 and 6 of the Defenders Declaration which elaborate the fundamental right to free speech and association guaranteed by articles 19 and 22 of the International Covenant on Civil and Political Rights ("ICCPR"), and articles 19 and 20 of the Universal Declaration of Human Rights. When lawyers face professional restrictions because of their human rights activities, these long-standing international rights are violated.

Conclusion

15. These examples highlight the ways that States manipulate presumptively legitimate administrative and legal mechanisms and resort to physical abuse in order to retaliate against human rights lawyers. While such abuse is not unique to lawyers, the examples above suggest two conclusions regarding lawyer-specific human rights violations. First, such abuses are particularly troubling because their effects are felt by both the lawyer and client. Second, harassment of lawyers has the effect of forcing

those lawyers to choose between support for human rights and the practice of law. The ICCPR lists legal rights which not only specifically include the right to access a lawyer, but more generally require a lawyer for their assertion Furthermore, as the Basic Principles and the Defenders Declaration make clear, lawyers are entitled and encouraged to promote the rule of law and incorporate human rights principles into their practice; they should not suffer retribution for doing so.

16. The Lawyers Committee calls upon the Commission on Human Rights to support efforts to strengthen the protection of human rights lawyers in international law. The Commission should highlight the unique role that lawyers play in the promotion and protection of human rights and strongly condemn retaliatory sanctions against them.